

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED PUBLIC WORKERS,) CIVIL NO. 03-00598 DAE/LEK
AFSCME LOCAL 646, AFL-)
CIO, MUTUAL AID FUND) AFFIDAVIT OF ERIC A. SEITZ
TRUST,)
Plaintiff,)
vs.)
GARY W. RODRIGUES,)
Defendant.)

(Trial: February 13, 2007)

AFFIDAVIT OF ERIC A. SEITZ

ERIC A. SEITZ, being first duly sworn on oath, deposes and says:

(1) I am the principal attorney for Defendant Gary W. Rodrigues in the above entitled matter.

(2) Mr. Rodrigues is sued in this case for alleged breaches of his fiduciary duties as the administrator of the Plaintiff Mutual Aid Fund Trust although he did not vote on or make any investment decisions.

(3) As of this date no discovery has been done in this case, and the Defendant has never been informed of what he allegedly did or failed to do that gives rise to his liability for any alleged breaches of his fiduciary duties.

(4) The primary witness in this matter is a man named Albert A. Hewitt who was charged and convicted of various criminal offenses in connection with his activities as a financial advisor and served a period of incarceration as a consequence of his convictions.

(5) Since the inception of this litigation the Plaintiff has been attempting to depose Mr. Hewitt and has scheduled his deposition on several occasions, but for various reasons—including the witness's apparent reluctance to cooperate -- Mr. Hewitt still has not been deposed.

(6) Most recently Mr. Hewitt's deposition was scheduled, by agreement, to be conducted on December 14, 2006; however, the Plaintiff was unable to locate and serve Mr. Hewitt on that occasion, so the deposition could not proceed.

(7) We have relied upon the representations of Plaintiff's counsel that Mr. Hewitt will be produced for a deposition and have delayed other discovery which will be highly dependent upon the testimony of Mr. Hewitt.

(8) Accordingly, the case is not now ready for trial.

(9) Moreover because the United States Court of Appeals still has not issued an opinion in a criminal matter involving Mr. Rodrigues, if this case were to proceed to trial at this juncture there would be significant issues as to the permissible scope of his cross-examination and impeachment which should be avoided by delaying the trial of this case.

(10) Additionally, I have other trial commitments during the month of February which will necessitate that I be absent from the State of Hawaii.

(11) For all of the foregoing reasons it is requested that this Court shorten the time for hearing the Defendant's motion to continue the trial of this case which currently is scheduled for February 13, 2006.

(12) Counsel for the Plaintiff has authorized me to represent to the Court that he does not oppose this motion to shorten time.

/s/ Eric A. Seitz
ERIC A. SEITZ

Subscribed and sworn to before me
this 27th day of December, 2006

/s/ Juli T. Seitz
JULI T. SEITZ
Notary Public, State of Hawaii
My commission expires: January 4, 2008